



*Contains Color Images*

May 25, 2005

**Via E Filing**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

**Re: Notice of Consummation (Boonville Lift Bridge)**

**Docket No. AB-102 (Sub-No. 13); Missouri-Kansas-Texas Railroad Company – Abandonment – In St. Charles, Warren, Montgomery, Callaway, Boone Howard, Cooper and Pettis Counties, MO**

Dear Mr. Williams:

This refers to the Certificate of Interim Trail Use or Abandonment served in this proceeding on April 27, 1987, a copy of which is attached as Exhibit 1 for ready reference. The CITU covered the entire 199.92 mile line of railroad involved in the proceeding, between milepost 26.92 near Machens and milepost 226.84 near Sedalia, MO. Union Pacific Railroad Company ("UP") is the successor in interest to the Missouri-Kansas-Texas Railroad Company (MKT), the applicant in this proceeding.

This letter is UP's formal notice that it has consummated the abandonment of the segment of the corridor comprising the Boonville Lift Bridge over the Missouri River at MKT milepost 191.1, effective May 25, 2005. The consummation is only as to the bridge, not to any other part of the corridor.

As explained below, while the bulk of the corridor involved in the above proceeding was conveyed to the Missouri Department of Natural Resources ("MDNR") under a 1987 Interim Trail Use Agreement, the conveyance did not include the Boonville Lift Bridge, and there has never been an agreement meeting the requirements of the National Trail Systems Act or the CITU for this bridge. Accordingly, under the terms of the CITU, UP is free to fully abandon this structure. MDNR has recently agreed to consummation of the abandonment as to the bridge (see letter attached as Exhibit 3) and UP is, accordingly, exercising its right under the CITU to fully abandon it.

**Robert T. Opal**  
General Commerce Counsel

**UNION PACIFIC RAILROAD**  
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580  
ph. (402) 544-3072 fx. (402) 501-0132  
rtopal@up.com

We are not requesting any affirmative action from the Board, since this notice of consummation is self-executing. Nevertheless, we are providing the following information as background for the Board:

1. On April 27, 1987, the ICC served a Certificate of Interim Trail Use or Abandonment ("CITU") in this proceeding authorizing MKT and MDNR to negotiate trail use of the entire corridor (including the Boonville Lift Bridge). The CITU ordered, among other things, that a trail use agreement require the trail use to either assume liability for the property or (if the user was immune from liability) indemnify the railroad against potential liability (Ordering Paragraph #2). The CITU also authorized MKT to abandon the line if an interim trail use agreement was not made (Ordering Paragraph #5). A copy of the CITU is attached as Exhibit 1 for ready reference.
2. The MKT entered into an Interim Trail Use Agreement with the Missouri Department of Natural Resources (MDNR) dated June 25, 1987 ("Agreement") under which MDNR acquired the right-of-way. A copy of the original Agreement (not including exhibits) is attached as Exhibit 2.
3. The Boonville Lift Bridge was expressly excluded from the property conveyed to MDNR (Agreement, Section 6, pp. 6 and 9). Further, under Section 8 of the Agreement (p. 10), MDNR expressly assumed legal liability only with respect to "those portions of the premises for which possession has been delivered to MDNR", which did not include the Boonville Lift Bridge. As such, the requirements of the National Trails System Act and of the CITU were not met as to the bridge when the Agreement was made.
4. Under Section 6 (p. 9) of the Agreement, MDNR was given the right to utilize the Boonville Lift Bridge for interim trail use upon execution of waivers of liability acceptable to MKT. In effect, this provision gave MDNR the option to utilize the bridge as a trail at a later date, by meeting the requirements for interim trail use for the bridge at such time (and if) it decided to exercise the option.
5. MDNR has developed a major trail on the right-of-way known as the "Katy Trail". However, MDNR has never utilized the bridge for trail use under Section 6, and has never assumed liability for the bridge consistent with the CITU. The bridge has thus remained unused, with the lift span in the raised position. Instead of using the railroad bridge to cross the Missouri River at Boonville, the Katy Trail was routed over a nearby highway bridge.

6. By letter dated May 20, 2005, MDNR has formally waived its rights under Section 6 of the 1987 Agreement to use the Boonville Lift Bridge for interim trail use, and released UP from any obligation to retain the bridge for possible future trail use. A copy of MDNR's letter is attached as Exhibit 3. The MDNR letter expressly permits UP to consummate abandonment as to the bridge, and to remove it at UP's sole cost.
7. The U.S. Coast Guard has been demanding that UP remove the Boonville Lift Bridge since 1991 (Exhibit 4). UP is currently prepared to undertake the removal as soon as the necessary permits are received from the Coast Guard and from the Army Corps of Engineers. UP intends to use some of the spans from the Boonville Lift Bridge to double track its Osage River bridge at Osage City, MO to provide needed additional capacity on UP's main line between St. Louis and Kansas City, MO.
8. The Coast Guard and the Army Corps of Engineers are addressing Section 106 Historic Preservation requirements as to the bridge as part of their permitting processes, and a draft MOU is pending approval.
9. The consummation of the abandonment as to the Boonville Lift Bridge, and its removal, will not affect the eligibility of any other part of the Katy Trail corridor for trail use under the National Trail Systems Act, see Docket No. AB-3 (Sub-No. 130, Missouri P. R. Co. – Abandonment (decision served August 4, 1999), p.3; Docket No. AB-406 (Sub-No. 6X), Central Kansas R. Co – Abandonment Exemption, (decision served December 8, 1999), p 7, fn. 12-13. The segments of the trail corridor on both sides of the bridge connect with the national railroad network at multiple locations. The segment north of the bridge (Boonville to Machens) connects with NS at St. Charles, MO and BNSF at Machens, MO. The segment south of the bridge (Boonville to Clinton)<sup>1</sup> connects with UP at Boonville and Sedalia, MO and with the Missouri and Northern Arkansas Railroad at Clinton, MO. This segment also connects with a former CRI&P line at Windsor, MO which is out of service, but not abandoned.<sup>2</sup> A map showing the trail corridor and the intersecting rail lines is attached as Exhibit 5.

We are forwarding the original and ten (10) copies of this letter and the attached exhibits for the Board's files via UPS Overnight. Please feel free to contact me should you have any questions.

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1 The 1987 Agreement as originally executed covered the corridor from Machens to Sedalia. The segment between Sedalia and Clinton was added later, see Docket No. AB-102 (Sub-No. 16), Missouri-Kansas-Texas R. Co. – Abandonment – In Pettis and Henry Counties, MO, (CITU served April 26, 1991).

2 The former CRI&P line is owned by a short line railroad and is the line involved in Lee's Summit v. STB, 231 F. 3d 39 (D.C. Cir., 2000).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Robert T. Opal", with a stylized flourish at the end.

Robert T. Opal

General Commerce Counsel

Direct dial: 402/544-3072

Fax: 402/501-0132

**CERTIFICATE OF SERVICE**

I certify that I have this date served a copy of the foregoing document on the persons listed below by First Class, United States Mail:

Doyle Childers, Director  
State of Missouri  
Department of Natural Resources  
P. O. Box 176  
Jefferson City, MO 65101

Roger K. Wiebusch  
Bridge Administrator  
United States Coast Guard  
1222 Spruce Street  
St. Louis, MO 63103-2832

William Bryan, Esq.  
Deputy Chief Counsel  
State of Missouri  
Office of Attorney General  
221 West High Street, 8<sup>th</sup> Floor  
Jefferson City, MO 65101

Dated at Omaha, NE this 25<sup>th</sup> day of May, 2005.

  
Robert T. Opal

## **EXHIBITS**

- Exhibit 1**     Docket No. AB-102 (Sub-No. 13), CITU served April 27, 1987
- Exhibit 2**     MDNR-MKT Interim Trail Use Agreement, June 25, 1987
- Exhibit 3**     MDNR letter to UP, May 20, 2005
- Exhibit 4**     U.S. Coast Guard letter to UP, July 30, 2002
- Exhibit 5**     Map – KATY Trail corridor and intersecting rail lines

## EXHIBIT 1

DO

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

APR 27 1987

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-102 (Sub-No. 13)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY -- ABANDONMENT -- IN  
ST. CHARLES, WARREN, MONTGOMERY, CALLAWAY, BOONE, HOWARD, COOPER  
AND PETTIS COUNTIES, MO

Decided: April 22, 1987

I have considered the record in this proceeding, including the administratively final decision served and published March 16, 1987, in which applicant was authorized to (a) discontinue service over; or (b) abandon its 199.92-mile line of railroad between milepost 26.92; near Machens and milepost 226.84 near Sedalia, MO. That decision provided that any person, including a government entity, could offer financial assistance to the carrier under 49 C.F.R. 1152.27(c) and 49 U.S.C. 10905 within 10 days of publication of the Commission's findings in the Federal Register.

In addition, the decision found interim trail use/rail banking under 49 C.F.R. 1152.29 feasible, and applicant has notified the Commission that it is willing to negotiate an interim trail use agreement.

The time for filing offers of financial assistance has expired without a bona fide offer. In absence of an offer and in view of applicant's willingness to negotiate an interim trail use agreement, an appropriate decision and certificate must be entered.

It is certified: The present and future public convenience and necessity permit (a) discontinuance of service over; or (b) abandonment of the described line of railroad, subject to the employee protective conditions in Oregon Short Line R. Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979), and subject to the directives for implementing interim trail use/rail banking set forth in the orders below.

It is ordered:

1. Subject to any conditions set forth above, the railroad may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this certificate. Tariff cancellations must refer to this decision and certificate by date and docket number.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.



3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this certificate and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this certificate, interim trail use may be implemented. If no agreement is reached by the 180th day, applicant may fully abandon the line.

6. This decision and certificate will be effective 30 days from the date of service.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

(SEAL)

Noreta R. McGee  
Secretary

## EXHIBIT 2

Agreement and Contract for Trail use pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) between the MISSOURI DEPARTMENT OF NATURAL RESOURCES (hereinafter MDNR), and the MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (hereinafter MKT).

MDNR and MKT hereby agree to the transfer of the interest of MKT in the property described below to MDNR, for interim trail use, at the price and upon the terms and conditions set forth herein:

1. MKT agrees to accept as full and valid consideration for the above referenced transfer, and MDNR agrees to approve the payment of, the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS for all interests of MKT in the property described in paragraph 5 below (hereinafter referred to as the "premises").
2. Contingent upon the issuance of a Certification of Interim Trail Use (CITU) by the Interstate Commerce Commission to MKT in IOC proceeding Docket No. AB-102 (Sub-No. 13), MKT shall convey or cause to be conveyed the premises to MDNR or its designee by quitclaim deed. The grantee in said deed shall be MDNR or its designee as stated in writing by MDNR. A sample deed is attached hereto as Exhibit "A". The sample deed shall be deemed approved unless disapproved in writing by MDNR within thirty (30) days from the execution of this Agreement. In the event of such disapproval MKT shall within thirty (30) days thereof execute and deliver to MDNR a quitclaim deed revised to address MDNR's objections. MDNR shall have the right to have the real property surveyed by a registered surveyor at the expense of MDNR by serving written notice to MKT of its intent to survey the real property within ten (10) days of the date of execution of this Agreement.

A true copy of the survey shall be delivered to MKT at the time of its completion. The description of the real property as set forth in the MDNR survey, if performed, shall be conclusive upon the parties and shall be incorporated by reference and included as a description of the premises to be conveyed (subject to the exclusions contained in Paragraph 6) in final deed documents in lieu of the description contained in Paragraph 6 below. In the absence of notice by MDNR to MKT of its intent to survey the real property, the description of the premises, as set forth in Paragraph 6 of this document, subject to the exclusions contained therein shall be utilized in the final deeds as the description of the premises to be conveyed by MKT to MDNR.

3. This agreement and any conveyance pursuant thereto shall not include rails, ties, wires, signals and other track materials, except ties located upon a bridge or trestle which is subject to this agreement, and mile post markers. Provided, however, that MKT agrees to remove all rails and ties, except ties located upon a bridge or trestle, from the premises within eighteen (18) months from the date of execution of this Agreement except for any portion of the premises which may be used by the St. Charles and Augusta Railroad Company, its successors or assigns, for railroad operations. MKT does not warrant that the property, real or otherwise, conveyed pursuant to this Agreement is suitable for the purposes contemplated herein or any other particular purpose or use. Provided, however, that MKT agrees to conduct salvage operations in a manner which will not adversely affect MDNR's use of the premises as a rail-banked interim trail and that ballast and fill material will not be removed from the property during salvage operations. A copy of this Agreement shall be provided by MKT to any independent contractor conducting salvage operations upon the premises.

4. The parties agree that the time of closing as to the Boonville, North Jefferson and Sedalia depots, and that portion of the premises which is located between Mile Post 141.0 at Jefferson City and Mile Post 179.0 at Rocheport, Missouri, shall be five (5) days following MKT's notice to MDNR that all rail and ties have been removed from such portion of the premises but no later than August 20, 1987, unless postponed as set forth below. As to those portions of the premises to be conveyed pursuant to this paragraph, MDNR reserves the right to inspect the premises prior to the date of closing to ascertain MKT's compliance with the provisions of this contract. MKT agrees to notify MDNR upon completion of salvage operations that the premises is subject to such inspection. MDNR shall be so notified not less than five (5) days prior to the date of closing. In the event that MDNR determines upon inspection that MKT has failed to comply with the provisions of this agreement, MDNR shall notify MKT in writing of the basis for such failure. MKT shall endeavor to correct any such deficiencies which in its opinion are subject to this Agreement, within fifteen (15) days of notice from MDNR indicating MKT's failure to comply with this Agreement. MDNR shall thereafter re-inspect the property within five (5) days of notice from MKT that such deficiencies have been corrected. In the event that MDNR determines that such inspection and re-inspection is necessary, the date of closing shall be postponed if necessary, but shall not be later than ten (10) days following MDNR's re-inspection and determination that the previously noted failures to comply with this Agreement have been corrected. A partial payment in the amount of ONE-HUNDRED EIGHTY THOUSAND (\$180,000.00) DOLLARS shall be made to MKT upon this closing at which time a quitclaim deed, in form for recordation, conveying those portions of the premises which are the subject of this paragraph, shall be delivered to MDNR.

5. The parties agree that closing as to all other portions of the premises as described in paragraph six and not previously conveyed pursuant to paragraph four shall occur not later than eighteen (18) months from the date of execution of this Agreement. MDNR reserves the right to inspect the premises prior to closing as to those portions of the premises conveyed pursuant to this paragraph. MKT agrees to notify MDNR upon completion of salvage operations on any continuous segment located within a single county, that the property is subject to inspection. MDNR shall thereafter inspect the portion of the premises described in such notice within forty-five (45) days. In the event that MDNR determines upon inspection that MKT has failed to comply with the provisions of this Agreement, MDNR shall notify MKT in writing of the basis for such failure. MKT shall endeavor to correct any such deficiencies which in its opinion are subject to this Agreement within thirty (30) days of receipt of MDNR's notice indicating a failure to comply with this Agreement. MDNR shall re-inspect the property within twenty (20) days of notice from MKT that the deficiencies have been corrected. An executed quitclaim deed, in form for recordation, conveying the portion of the premises previously inspected by MDNR, shall be delivered to MDNR within ten (10) days of MDNR's notice to MKT that the inspection or re-inspection has been completed and that MDNR is requesting delivery of the deed conveying the portion of the premises upon which the inspection has been completed. Upon conveyance to MDNR of all portions of the premises which are subject to this Agreement, MDNR shall cause to be delivered to MKT the sum of TWENTY THOUSAND (\$20,000.00) DOLLARS as final payment for the premises. In the event that all deeds shall not have been delivered by the expiration of eighteen (18) months from the

date of execution of this agreement, then at MDNR's option, either:

a. MKT shall pay the Conservation Foundation of Missouri Charitable Trust an amount determined by multiplying the acquisition price set forth in paragraph 1 hereof by a fraction of which the numerator is the number of linear miles of the premises contained in the segment or segments not conveyed, and the denominator is 197.67; and MKT's obligations under this paragraph 5 shall be deemed fulfilled; or

b. MKT shall pay to the Conservation Foundation of Missouri Charitable Trust an amount equal to the entire acquisition price as set forth in paragraph 1 hereof, and MDNR shall reconvey the premises by quitclaim deed to MKT, and this agreement shall cease and terminate, and become null and void; or

c. MDNR may seek conveyance of the remaining segments by means of a suit for specific performance, and MKT agrees, in that event, to pay all court costs and reasonable attorney's fees in connection with such suit, by whichever party or parties incurred, if MDNR succeeds in obtaining a final judgment requiring specific performance.

6. The property to be conveyed by MKT to MDNR consists of all of MKT's right, title, and interest in and to the following described real property and premises, situated in the counties of St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis, State of Missouri, and as more generally set-forth in exhibit "B" attached hereto and made a part hereof, save and except those certain exceptions and exclusions set-forth in this paragraph six and any other properties conveyed prior to the date of execution of this agreement, to wit:

A strip of land of varying widths consisting of fee simple and right-of-way interests constituting a continuous corridor beginning at MKT St. Louis Subdivision Main Line Chaining Station 1421+38 (Mile Post 26.92) and extending in a generally westerly direction through the counties of St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis to MKT Sedalia Subdivision Main Line Chaining Station 11858+30 (Mile Post 224.59), a distance of one hundred ninety-seven and sixty-seven hundredths (197.67) miles, more or less, together with all rights-of-way, station grounds and other real property associated therewith, not excluded and excepted herein, and all improvements and fixtures located thereon, including the Boonville, Sedalia and North Jefferson depot buildings; all bridges and trestles including ties located thereupon, except the Boonville lift bridge, as hereinafter provided; and all mile post markers, culverts, ballast and similar structures and improvements, but not including rails and ties, wires, signals and other track materials except ties located upon bridges or trestles. The premises is more particularly described as follows:

St. Charles County, Missouri

Commencing at Chaining Station 1421.38, said point being the beginning of MKT ownership of the Main Line track diverging from the Main Line track of the Burlington Northern Railroad, in U.S. Survey 174, Township 48 North, Range 6 East of the 5th Principal Meridian, thence southwesterly, through Township 47 North, Range 6 East; Township 47 North, Range 5 East; Township 46 North, Range 5 East; Township 46 North, Range 4 East; Township 46



North, Range 3 East; Township 45 North, Range 3 East; Township 45 North, Range 2 East; Township 44 North, Range 2 East; Township 44 North, Range 1 East; to the west line of St. Charles County.

Warren County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Warren County, thence northwesterly, through Township 44, Range 1 West of the 5th Principal Meridian; Township 45 North, Range 1 West; Township 45 North, Range 2 West; Township 45 North, Range 3 West; Township 46 North, Range 3 West; Township 46 North, Range 4 West; to the west line of Warren County.

Montgomery County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Montgomery County, thence westerly, through Township 46 North, Range 5 West of the 5th Principal Meridian; Township 46 North, Range 6 West; to the west line of Montgomery County.

Callaway County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Callaway County, thence southwesterly, through Township 46 North, Range 7 West of the 5th Principal Meridian; Township 46 North, Range 8 West; Township 45 North, Range 8 West; Township 45 North, Range 9 West; Township 44 North, Range 9 West; Township 44 North, Range 10 West; Township 44 North, Range 11 West; thence northwesterly through Township 45 North, Range 11 West; to the west line of Callaway County.

Boone County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Boone County, thence northwesterly, through Township 45 North, Range 12 West of the 5th Principal Meridian;

Township 45 North, Range 13 West, Township 46 North, Range 13 West;  
Township 47 North, Range 13 West; Township 47 North, Range 14 West;  
Township 48 North, Range 14 West; Township 48 North, Range 15 West; to the  
west line of Boone County.

Howard County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line  
track and the east boundary line of Howard County, thence westerly,  
through Township 48 North, Range 15 West of the 5th Principal Meridian;  
Township 49 North, Range 15 West; Township 49 North, Range 16 West; thence  
southerly, through Township 48 North, Range 16 West; to the south line of  
Howard County.

Cooper County, Missouri

Commencing at the intersection of MKT's Sedalia Subdivision Main Line  
track and the north boundary line of Cooper County, thence southwesterly,  
through Township 49 North, Range 17 West of the 5th Principal Meridian;  
Township 48 North, Range 17 West; Township 48 North, Range 18 West;  
Township 47 North, Range 18 West; Township 47 North, Range 19 West;  
Township 46 North, Range 19 West; to the west line of Cooper County.

Pettis County, Missouri

Commencing at the intersection of MKT's Sedalia Subdivision Main Line  
track and the east boundary line of Pettis County, thence southwesterly,  
through Township 46 North, Range 20 West of the 5th Principal Meridian;  
Township 46 North, Range 21 West; to MKT Chaining Station 11858+30 in the  
SE 1/4 of the NW 1/4 of Section 36, Township 46 North, Range 21 West.

Also: All of MKT's interest in that certain 47,610 square foot, more or  
less, tract of land at the corner of Thompson Avenue and U.S. Highway No.

50, (Third Street), in the City of Sedalia, Missouri, including MKT's former passenger depot building located thereon, all as shown in yellow on a print of MKT's Drawing No. 31,007, dated November 27, 1982, Engineering Department, Denison, Texas, marked Exhibit "C", attached hereto and by this reference made a part hereof.

Excepting and Excluding

Excepting and excluding from the said conveyance all of MKT's interest in the following described parcels of land and/or structures:

St. Charles County, Missouri

A tract or parcel of land at Black Walnut, Missouri, approximately one-hundred (100) feet by one thousand two hundred thirty (1,230) feet, containing 2.82 acres, more or less, lying outside a line parallel to and fifty (50) feet north of the centerline of MKT's St. Louis Subdivision Main Line track, and west of the centerline of a County Road which crosses said Main Line track at approximately Mile Post 29.90.

Howard County, Missouri

All tracts or parcels of land in the City of New Franklin, Missouri, lying outside a line parallel to and fifty (50) feet distant in either direction from the centerline of MKT's St. Louis or Sedalia Subdivision Main Line track.

Howard and Cooper Counties, Missouri

MKT's Boonville lift bridge, being MKT's Bridge No. 191.1 across the Missouri River at Boonville, Missouri. MKT agrees that said bridge shall be kept available for transportation purposes in accordance with ICC decision ex parte No. 274 (Sub.-No. 13) and that MDNR upon execution of waivers of liability acceptable to MKT may utilize the bridge for trail purposes; provided, however, that MKT reserves the right to modify the bridge structure as may be required to improve rail transportation, so long as MDNR's right to utilize the premises for interim trail use is not adversely affected thereby.

7. MKT agrees to assign to MDNR, as of the date of delivery of deed or deeds, all leases, license and other agreements, hereinafter agreements, executed by MKT and third parties for the use of the premises. The income derived from agreements bearing annual, semi-annual, quarterly, or monthly rental shall be prorated as between MDNR and MKT based upon the ratio of the portion of the current rental period remaining pursuant to the agreement as of the date of delivery of the deed or deeds over total length of current rental period times the income collected for the current rental period.
8. This agreement and any subsequent conveyance are made pursuant to Section 8(d) of the National Trails System Act 16 U.S.C. 1247(d). MKT agrees to defend, indemnify and to hold MDNR harmless from any claim, injury or damage arising from any contamination or pollution of the premises resulting from the application, inadvertent or otherwise, of man-made substances which constitute a danger to public health or the environment. With respect to those portions of the premises for which possession has been delivered to MDNR, MDNR agrees to operate, assume legal liability for the use of, manage, maintain and control the premises in accordance with the laws of the State of Missouri and Provisions of the National Trails System Act and Regulations promulgated pursuant thereto.
9. In the event the Interstate Commerce Commission determines that reactivation of rail service upon the premises is necessary for the public convenience and necessity, the MDNR agrees to transfer said premises to the acquiring entity in accordance with any lawfully applicable Interstate Commerce Commission decision. Provided, however, that should MKT, pursuant to order of the Interstate Commerce Commission, desire to purchase the premises MKT agrees to pay the greater of fair market value of the premises at the time of such lawfully entered Interstate Commerce Commission decision or the sum

of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS plus all capital improvements and maintenance costs expended by the MDNR during the term of its possession pursuant to the National Trails System Act. The MDNR agrees to grant first right of refusal to purchase the premises to MKT.

10. MDNR agrees to use its best efforts to defend any litigation contesting the right of the parties hereto to effectuate this Agreement; however, if by final order of a court of competent jurisdiction, within the time limits set forth below, MDNR is prevented or obstructed from utilizing the premises for trail and rail banking purposes, MDNR may request and MKT agrees to refund the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS to the Conservation Federation of Missouri Charitable Trust upon receipt of a quitclaim deed from MDNR reconveying the premises to MKT. Provided however, the provisions of this paragraph shall remain in effect only until seven (7) years from date of execution of this Agreement.
11. Except as otherwise provided in paragraph 10 above, the parties agree that if MDNR is unable to utilize the premises, or a portion thereof, for trail purposes within five (5) years from the date of execution of this Agreement, MDNR may request and MKT agrees to refund the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS to the Conservation Foundation of Missouri Charitable Trust upon receipt of quitclaim deed from MDNR reconveying the premises to MKT.
12. Any judgment against MKT which may appear of record as a lien against said premises, or a portion thereof, as of the date of MDNR's receipt of the deed for same, shall be settled and satisfied by MKT, if and when it is judicially determined to be finally valid. MKT agrees to defend, hold harmless and indemnify MDNR for all loss arising out of MKT's failure to have said judgment so settled and satisfied.

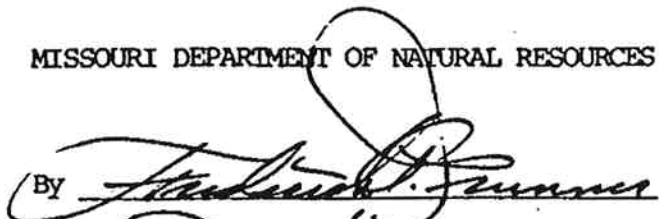
13. MKT represents that the premises is presently subject to a mortgage or other similar encumbrance and agrees to furnish MDNR with releases within a reasonable time subsequent to execution of this Agreement by both parties, which establish that the property is no longer subject to any encumbrance or mortgage. MKT agrees to defend, indemnify and hold harmless MDNR for all losses arising as a result of MKT's failure to provide such releases or to satisfy and settle any mortgage or other similar encumbrance. MKT shall be responsible for real estate taxes which have accrued as of the date of MDNR's receipt of the deed for the segment upon which such tax is due.
14. MKT agrees to provide MDNR with all original documents, maps, records, deeds and linen drawings which are pertinent to the premises and which MKT deems to be available and unnecessary for retention by MKT. MDNR agrees to retain any such items in a manner so as to protect and preserve their condition or to return them to MKT. MDNR agrees to assume any expense associated with the transfer of such items.
15. All notices shall be served in writing and shall be deemed to have been sufficiently served by either party if sent by registered or certified mail with proper postage prepaid addressed to the other party at the address shown herein.
16. This offer when accepted shall constitute the entire agreement between the parties for the sale and transfer of the property herein described and each and every provision contained herein shall thereafter be binding upon and inure to the benefit of MDNR and MKT, their agents, successors in interest and assigns.

The foregoing agreement is executed by the Missouri Department of Natural Resources this 25 day of June, 1987.

MISSOURI DEPARTMENT OF NATURAL RESOURCES

WITNESS

Kandice Johnson  
109 Sunset Hall  
Address Columbia, MO.

By   
Title Director

The foregoing agreement is executed by Missouri-Kansas-Texas Railroad Company this 25 day of June, 1987.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

~~ATTEST~~ WITNESS

R. C. Fucini  
Rt 4 Box 21  
Address Union, Missouri 65201

By   
Vice-President

## EXHIBIT 3



STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Matt Blunt, Governor • Doyle Childers, Director

[www.dnr.mo.gov](http://www.dnr.mo.gov)

May 20, 2005

CERTIFIED MAIL #7001 1940 0002 6946 8041  
RETURN RECEIPT REQUESTED

Mr. William E. Wimmer  
Vice President – Engineering  
Union Pacific Railroad Company  
1400 Douglas Street  
STOP 0910  
Omaha, NE 68179

RE: Former MKT Missouri River Bridge 191.1 at Boonville, MO

Dear Mr. Wimmer:

This letter is in reference to the Interim Trail Use Agreement (“ITUA”) between the Missouri Department of Natural Resources (“MDNR”) and the Missouri-Kansas-Texas Railroad Company (“MKT”), predecessor in interest of Union Pacific Railroad Company (“UP”), dated June 25, 1987.

Paragraph 6 of the ITUA provides, in relevant part, as follows:

“MKT agrees that said bridge [MKT Bridge No. 191.1 at Boonville] shall be kept available for transportation purposes in accordance with ICC decision ex parte no. 274 (Sub.-No. 13) and that MDNR upon execution of waivers of liability acceptable to MKT may utilize the bridge for trail purposes; provided, however, that MKT reserves the right to modify the bridge structure as may be required to improve rail transportation, so long as MDNR’s right to utilize the premises for interim trail use is not adversely affected thereby.”

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Page Two

By this letter, MDNR is permanently waiving its right under the above quoted language to utilize the bridge for trail purposes and releasing UP from any obligation under the ITUA to keep the bridge available for transportation purposes. Further, by waiving this right MDNR terminates any responsibility or assumption of liability for the bridge. Accordingly, MDNR has no objection to UP consummating the abandonment of the bridge and removing it at UP's sole cost.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES

A handwritten signature in dark ink, appearing to read "Doyle Childers", with a long horizontal flourish extending to the right.

Doyle Childers  
Director

## **EXHIBIT 4**

U.S. Department  
of Transportation

United States  
Coast Guard



Commander  
Eighth Coast Guard District

1222 Spruce Street  
St. Louis, MO 63103-2832  
Staff Symbol: obr  
Phone: (314)539-3900x2379  
FAX: (314)539-3755

16241.10/197.1 MOR  
July 30, 2002

Mr. Bill Stapp  
Union Pacific Railroad  
Room 430  
1416 Dodge Street  
Omaha, NE 68179-0430

Subj: BOONVILLE RAILROAD DRAWBRIDGE, MILE 197.1, MISSOURI RIVER

Dear Mr. Stapp:

The subject bridge has not been used for transportation for many years. We have been lenient with the railroad to provide you the opportunity for reuse of the bridge.

The following is a synopsis of actions to date:

- a. On November 20, 1991, we notified your firm that the subject bridge no longer serves a transportation purpose and must be removed from the river (Enclosure 1). We also requested that we be provided with a copy of your demolition plan within 30 days. The demolition plan was never received.
- b. On December 13, 1991, the General Attorney for the railroad replied to our 11/20/91 letter (Enclosure 2). He stated that the structure was being maintained with the lift span raised and requested information supporting our position that the structure must be removed.
- c. On March 26, 1992, we sent a letter to your General Attorney explaining why the structure must be removed and again requesting that the railroad submit a demolition plan to us for approval (Enclosure 3). Again, this office has received no demolition plan.
- d. On February 22, 2002, we once again sent a letter to your company explaining why the structure must be removed and requesting that you respond in writing your intentions concerning its removal (Enclosure 4).
- e. On March 8, 2002, you replied to our previous letter stating that there was the possibility of selling the structure (Enclosure 5). You further stated that you did not want to demolish the structure as long as someone else was interested assuming ownership.
- f. On March 26, 2002, we replied to your most recent letter stating that no more delays would be accepted and requested that you submit a demolition plan for our approval (Enclosure 6). We still have not received your plan.

16241.10/197.1 MOR  
July 30, 2002

Subj: BOONVILLE RAILROAD DRAWBRIDGE, MILE 197.1, MISSOURI RIVER

This letter serves to notify you that we are now prepared to open civil penalty action against your company for violation of Title 33 USC 525(b), Failure to remove bridge when no longer used for transportation purposes. To avoid this action, the Union Pacific Railroad must submit a demolition plan to this office and initiate positive action for removal as soon as we approve the plan.

If no response is received by August 30, 2002, it will be assumed you have nothing to submit in your defense and we will forward the case to a Coast Guard Hearing Officer for suitable action.

Sincerely,



ROGER K. WIEBUSCH  
Bridge Administrator  
By direction of the District Commander

Encl: (1) CCDG2(ob) ltr dtd 11/20/91  
(2) UPRR ltr dtd 12/13/91  
(3) CCGD2(ob) ltr dtd 3/26/92  
(4) CCGD8(ob) ltr dtd 2/22/2002  
(5) UPRR ltr dtd 3/8/02  
(6) CCGD8(ob) ltr dtd 3/26/02

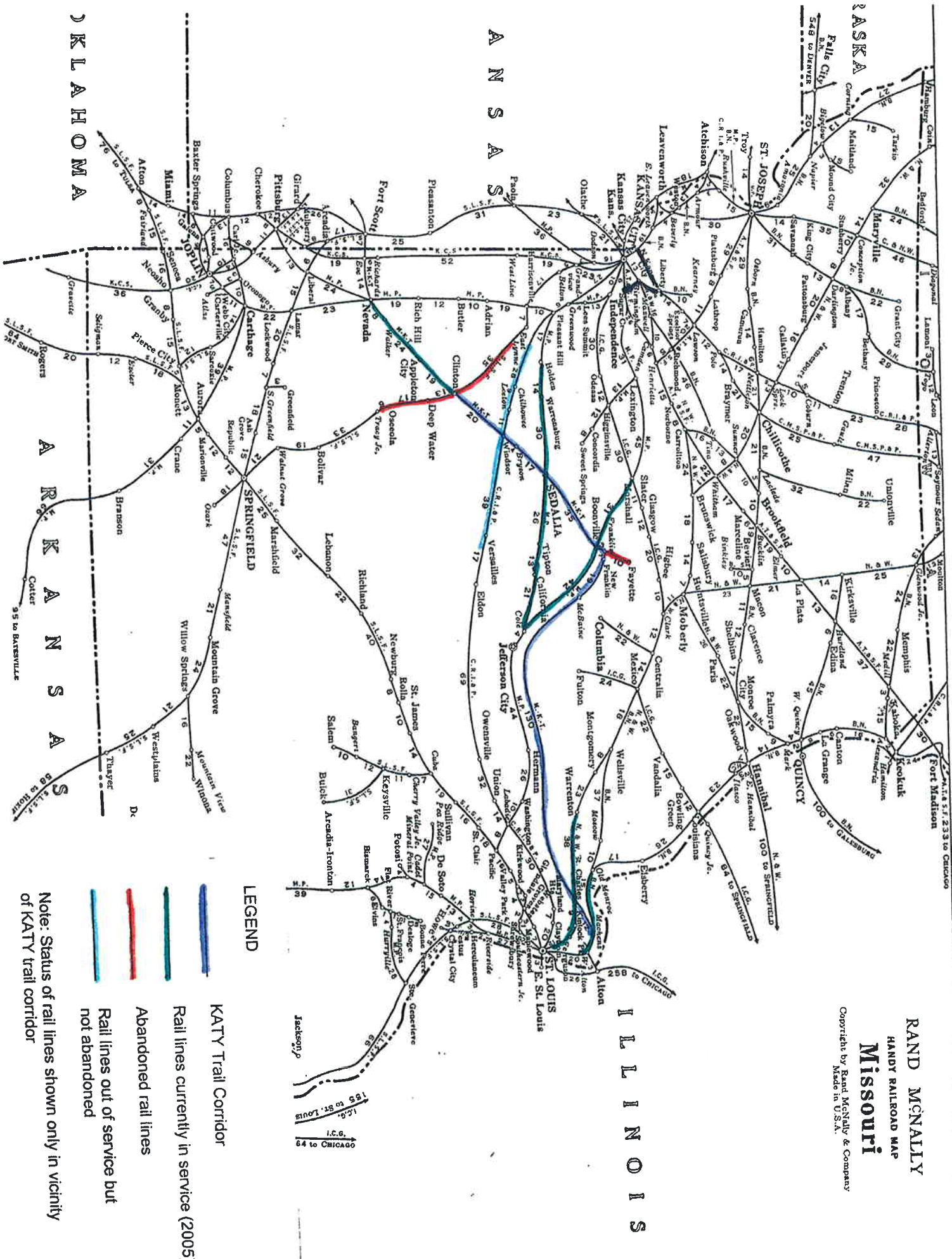
} not included

## EXHIBIT 5

WISCONSIN

RAND McNALLY  
HANDY RAILROAD MAP  
Missouri

Copyright by Rand McNally & Company  
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KANSAS

OKLAHOMA

ILLINOIS

LEGEND

- KATY Trail Corridor
- Rail lines currently in service (2005)
- Abandoned rail lines
- Rail lines out of service but not abandoned

Note: Status of rail lines shown only in vicinity of KATY trail corridor